

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

NICHOLAS RICHARD NAES,)
)
Plaintiff,) Cause No.: 1:21-cv-346
)
vs.)
)
MAJOR TOOL AND MACHINE, INC.,)
)
Defendant.)

COMPLAINT FOR DAMAGES AND REQUEST FOR JURY TRIAL

Plaintiff, by counsel, and as his Complaint for Damages against Defendant, states as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Nicholas Richard Naes, ("hereinafter "Naes" or "Plaintiff") was an employee of the Defendant and is a resident of Johnson County in the State of Indiana.
2. Defendant, Major Tool and Machine, Inc. (hereinafter "Major Tool and Machine" or "Defendant"), is an employer as defined by 29 U.S.C. § 825 *et. sec.*, and conducts business in the State of Indiana.
3. Mr. Naes invokes this Court's federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1333(a).
4. Venue in this Court is proper pursuant to 28 U.S.C. § 1331.

GENERAL FACTS & SPECIFIC ALLEGATIONS

5. Mr. Naes was employed by the Defendant for more than two (2) years as a Cell Operator.
6. Mr. Naes began an approved leave under the Family Medical Leave Act ("FMLA") on or about August 27, 2020, and returned from leave after 12 weeks, on approximately November 19, 2020.

7. On November 20, 2020, Mr. Naes had a discussion with his Team Lead, Josh, and the two of them agreed that Plaintiff could change his schedule in order to report to work one (1) hour earlier each day, and clock out one (1) hour earlier. His shift would now be 9:00 p.m. – 5:00 a.m. for the next few weeks.

8. Plaintiff worked his revised shift the following week without incident.

9. On December 7, 2020, Plaintiff and Josh had another discussion wherein it was agreed that Plaintiff could work the revised schedule for. The rest of the week and go back to his original schedule of 10:00 p.m. – 6:00 a.m. the following week.

10. On December 8, 2020, at the end of his shift, Plaintiff was brought into the office by his Plant Manager and Team Lead and terminated for alleged production issues.

11. Defendant contested Plaintiff's unemployment, and at the unemployment appeal hearing the Defendant testified that Plaintiff was terminated for changing his shift hours without permission.

Count I
Family Medical Leave Act

12. Plaintiff incorporates by reference paragraphs one (1) through eleven (11) above.

13. During his employment with Defendant, Plaintiff utilized approved Family Medical Leave.

14. Plaintiff suffered an adverse employment action when Defendant terminated his employment after utilizing Family Medical Leave.

15. Plaintiff:

A. Was treated less favorably than employees who had not taken leave, not requested leave, or were not in need of leave under the FMLA; or

B. Suffered an adverse employment decision in retaliation for taking leave under the FMLA; or

C. Suffered an adverse employment decision for taking leave under the FMLA and because of his perceived need for leave under the FMLA.

16. As a result, Plaintiff has sustained damages including, but not limited to, lost pay and benefits, liquidated damages, attorney fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant, for an award of back pay, job reinstatement, liquidated damages, prejudgment interest, reasonable attorney fees, costs and all other appropriate relief.

Respectfully submitted,

HENN HAWORTH CUMMINGS & PAGE

/s/ Paul J. Cummings

Paul J. Cummings, 22713-41

REQUEST FOR JURY TRIAL

Plaintiff, by counsel, respectfully requests this cause be tried by jury.

Respectfully submitted,

HENN HAWORTH CUMMINGS & PAGE

/s/ Paul J. Cummings

Paul J. Cummings, 22713-41

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